IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3419 of 2003

with

SPECIAL CIVIL APPLICATION No 8971 of 2003

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHAILESHKUMAR HARSHADKUMAR SHAH

Versus

ANAND REGIONAL CO-OPERATIVE OIL SEEDS GROWERS UNION LTD.

Appearance:

1. Special Civil Application No. 3419 of 2003
   MR TR MISHRA for Petitioner No. 1
   MR GM JOSHI for Respondent No. 1
2. Special Civil Application No. 8971 of 2003
   MR GM JOSHI for Petitioner No. 1
   MR TR MISHRA for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 31/08/2004

ORAL JUDGEMENT

1.0 The issue involved in both the above petitions are in connection with the same judgement and award and therefore both the same are taken up for hearing together.

2.0 In Special Civil Application No.3419/2003 the petitioner has challenged the judgement and award dated 31.1.2003 passed by the Labour Court, Anand in LCA No.45/96 in so far as it denied 75% backwages to the petitioner. In Special Civil Application No.8971/2003 the petitioner has challenged the aforesaid judgement in directing the petitioner to reinstate the respondent workman on his original post with 25% backwages.

3.0 The petitioner in Special Civil Application No.3419/03 (hereinafter referred to as the workman) was working the Anand Regional Coop. Oil Seeds Growers Union Limited (hereinafter referred to as the respondent employer). According to the workman, he was appointed by the respondent employer with effect from 1.7.1978 and his services were abruptly terminated on 20.12.1995. The workman, therefore raised an industrial dispute, which was culminated into Reference LCA No.45/96 before the Labour Court, Anand. The Labour Court, after hearing the parties, directed the respondent employer to reinstate petitioner in service along with 25% backwages. It is against the aforesaid judgement and award the present petitions have been filed.

4.0 Mr. Gautam Joshi for the respondent employer contended that there was allegation of misbehavior with the Chief Executive of the employer against the workman and others and in pursuance of that an inquiry was conducted and majority of the persons involved in the said incident have opted for voluntary retirement and the petitioner is the only person who faced with the departmental inquiry and he was ultimately removed from service. He submitted that the Labour Court has committed an error in rejecting the preliminary contention that the respondent workman is not a "workman" within the definition of workman under the Act. He submitted that misconduct of the respondent workman was of very serious nature and considering the allegation, the Labour Court ought not to have exercised power under section 11A and granted reinstatement and backwages.

5.0 Mr. Mishra for the workman submitted that the alleged incident of 15th September 1993 is a concocted one and there is no case made against the workman in the

evidence. He, therefore, submitted that the Labour Court ought to have granted 100% backwages.

6.0 I have heard the learned counsel for the respective parties and gone through the relevant evidence on record. The Labour Court in its elaborate judgement has discussed the grounds on which the Labour Court has rejected the preliminary contention of the respondent employer. It is true that the workman was directly reporting to the managing Director. However, from the record it is clear that the respondent workman was not doing any supervisory work.

6.1 Considering the evidence on record the Labour Court has found that the employee was a "workman" as defined under the Industrial Disputes Act. Apart from that the workman was also a protected workman. Therefore the Labour Court was justified in holding that workman was covered under the Industrial Disptues Act.

7.0 From the record the Labour Court has found that the respondent workman was not involved in the incident and therefore exercising power under section 11A of the Act, has substituted the penalty by directing to reinstate the petitioner while denying 75% backwages.

7.1 Looking to the evidence on record, I find that no illegality is committed by the Labour Court in passing the judgement and award in question and no interference is called for in the present proceedings. At the same time, I am of the opinion that the Labour Court has given cogent and sufficient reasons for not awarding 75% backwages. Therefore both the petitions require to be dismissed.

8.0 In the result both the petitions are dismissed. Rule is discharged with no order as to costs. However, looking to the particular facts and circumstances of the case, it is observed that the respondent workman will given an assurance by way of undertaking that he will not misbehave in future.

[K.S. JHAVERI, J.]

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